

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.967 OF 2002
IN
SESSIONS CASE NO.70 OF 1999

Chintya Gopal Guhe .. Appellant

Vs.

The State of Maharashtra .. Respondent

Mr.Kuldeep Patil for the appellant

Mrs.Mankunwar M. Deshmukh, A.P.P. for the State

**CORAM : J.N.PATEL &
A.A.SAYED, JJ.**

DATED : 20TH APRIL, 2007

ORAL JUDGMENT (PER J.N.PATEL, J):

1. The appellant accused was tried on a charge that on 20.08.98 at about 10.00 p.m.at the place where the deceased alongwith the children were residing i.e. Vilshet, Sambarepada within the jurisdiction of police station, Manor committed murder of his wife Kakadibai Chintya Guhe by means of a stone and thereby committed offence under

section 302 of the Indian Penal Code. The appellant was also tried on a charge for having committed house trespass in order to commit the murder which offence is punishable under section 452 of the Indian Penal Code.

2. The learned IInd Adhoc Addl.Sessions Judge, Palghar by judgment and order dated 08.05.2002 held the appellant accused guilty on both the counts and convicted him for having committed offence under sections 302 and 452 of the Indian Penal Code and sentenced him to suffer life imprisonment and to pay a fine of Rs.500/- in default to undergo R.I. for three months for having committed a offence punishable under section 302 of the Indian Penal Code and sentenced him to suffer R.I. for one year and to pay a fine of Rs.500/- in default to undergo R.I. for three months for an offence punishable under section 452 of the Indian Penal Code. The learned Judge directed substantive sentences on both the counts to run concurrently and also awarded set off. It is this judgement and order of conviction and sentence which is challenged in this appeal.

3. In a nutshell, it is the prosecution's case that the deceased Kakadibai had three marriages during her life time. Out of her first marriage, she had begotten two sons. Out of them, P.W.No.1, Santosh Kisan Bhagat was the eldest. She performed second marriage with one Kondya Bhoir and a daughter was born to them. Thereafter, she performed third marriage with the appellant accused i.e. Chintya Gopal Guhe.

4. According to the prosecution, there used to be frequent quarrels between the appellant accused and their mother, because of which at one point of time, they were required to reside at their aunt's house by name Gulab at Talawali and after she died they again returned to their mother at Kondgaon which again led to quarrels between them and the step father, Chintya Gopal Guhe because of which the family i.e. the deceased Kakadibai and the children came to reside at Vilshet. The accused used to visit Vilshet to meet his wife Kakadibai and there used to be frequent quarrels between them.

5. On the fateful day i.e. on 20.8.98, the appellant accused Chintya Gopal Guhe visited the deceased Kakadibai as she was not keeping well and then left the house. It so happened that on the very night when the deceased Kakadibai was sleeping alongwith the children, P.W.No.1, Santosh Kisan Bhagat woke up on hearing the sound and due to that other children of the deceased also woke up. He saw that the appellant accused had thrown a stone (pata) on the head of his mother because of which it got crushed and blood was oozing from the head and had ran away. P.W.No.1, Santosh Kisan Bhagat thereafter went to his neighbour's house and communicated the incident and requested him to accompany him to the house of Police Patil. He then went to the house of P.W.No.2, Hari Ambya Ghatal, Police Patil of the village and informed him of the incident. The Police Patil, P.W.No.2 accompanied P.W.No.5, Suresh Mahadu Ghatal and others visited the house of the deceased where they found the deceased Kakadibai was lying in a pool of blood. The children then shifted to the house of Suresh Mahadu Ghatal, P.W.No.5 and as it was night

time, the matter came to be reported at the Police Station in the early morning.

6. P.S.I. Jayraj Ramdas Chhapariya, P.W.No.7 was at the relevant time attached to Police Station, Manor. On 21.1.98, he recorded the report of Santosh Bhagat P.W.No.1 which came to be treated as F.I.R. Ex.12. On the basis of the said report, he registered Crime No.I-111/98 against the appellant accused for having committed offence under section 302 of the Indian Penal Code. P.S.I. Chhapariya thereafter visited the spot and prepared inquest panchnama Ex.7 and the spot panchnama Ex.16 in the presence of the panchas. From the spot, he seized a stone stained with blood and hair stuck to it. He also seized a saree, torn towel and gunny bag which was used as a mattress stained with blood under the panchnama and collected a sample of earth and the earth stained with blood from the spot. The dead body was sent to Rural Hospital, Manor for conducting post-mortem. He recorded statement of witnesses. In the course of investigation, he received information that accused is hiding in his house at Kondgaon. Therefore, he visited the place

and arrested the accused under the panchnama, Ex.18 and seized the clothes worn by the accused i.e. khaki half pant and baniyan which were found stained with blood. The police took charge of the clothes of the deceased after the post mortem examination under the panchnama Ex.8. The articles seized in the course of investigation were sent to forensic science laboratory. The investigating officer received the post mortem report as well as the C.A.'s report and on completion of the investigation, filed a charge sheet against the accused in the court of Magistrate which was committed for trial.

7. The appellant accused in respect of the charge pleaded innocence and claimed that he was sleeping in his house and he did not know what happened to Kakadibai. In order to prove their case, prosecution examined P.W.No.1, Santosh Kisan Bhagat who is the sole eye-witness of the incident, Hari Ambya Ghatal, P.W.No.2, Police Patil, Suresh Tanaji Punjara, neighbour P.W.No.5, Suresh Mahadya Ghatal, P.W.No.3 Suresh Tanaji Punjara, panch in whose presence inquest panchnama and spot/seizure

panchnama was prepared and P.W.No.4, Jabya Govind Ghatal, panch in order to prove the arrest of the appellant accused and seizure of his clothes. Prosecution also examined Doctor, P.W.No.6, Dr.Dinkar Divaji Gavit who conducted the post mortem examination and relied upon the C.A.'s report Ex.29. The trial court on conclusion of the evidence found that the prosecution has proved beyond doubt that it is the appellant accused who has committed murder of Kakadibai by causing her death with the stone (pata) and held the appellant accused guilty of having committed offence under section 302 and 452 of the Indian Penal Code.

8. The learned counsel for the appellant accused submitted that the prosecution case rest on the sole testimony of P.W.No.1, Santosh Kisan Bhagat. It is submitted that the evidence clearly indicates that the relations between the children of Kakadibai born from her previous husband and appellant accused were not cordial and their used to be frequent quarrels between them and therefore, in all probability, P.W.No.1 has falsely implicated the appellant accused who had visited his wife in

the evening in order to ascertain her welfare as she was not keeping well. It is submitted that the evidence of this witness is not sufficient to establish the guilt against the appellant accused beyond reasonable doubt for the very reason that it is doubtful as to whether P.W.No.1 has seen the culprit as it has come in his evidence that P.W.No.1 has changed his version as to when he actually saw the assailant. On one hand, he has deposed to the effect that he saw the appellant accused throwing the stone on the head of his mother because of which she died whereas on the other hand, he has deposed that he woke up after he heard the sound of 'Dhad' i.e. after the assailant had already assaulted the deceased. It has come in his evidence that he saw the appellant accused when he was running away and that too in the compound which has been brought on record in his cross-examination and therefore, in absence of any corroboration, the conviction of the appellant accused deserves to be quashed and set aside.

9. Mr.Patil, the learned counsel for the appellant accused further submitted that the two

witnesses who have been examined by the prosecution namely Police Patil, P.W.No.2, Hari Ambya Ghatal and neighbour, P.W.No.5, Suresh Mahadya Ghatal, deposed in their cross-examination that when P.W.No.1 came to them to inform that his mother is dead, he did not speak about the name of the assailant and therefore, it can be safely concluded that this witness i.e. P.W.No.1 has falsely implicated the appellant accused with whom he had enemical relations. It is further submitted that the prosecution has not brought on record any motive on the part of the appellant accused to have committed the murder of his wife. On the other hand, his conduct in visiting his wife when she was not keeping well shows that his love and affection for her was very much there and there is no reason why he would kill her.

10. The learned counsel for the appellant accused submitted that the prosecution has failed to place before the court the stone by which the assailant is alleged to have assaulted the deceased and there is no explanation of the same which rather creates doubt in the prosecution's case.

11. Mr.Patil, the learned counsel for the appellant accused fairly conceded that in so far as death of Kakadibai was homicidal is not much disputed and so also the place where she was killed, the arrest of the appellant accused and seizure of his clothes is nothing but an attempt on the part of the prosecution to manufacture evidence to show his complicity. Mr.Patil pointed out that according to PSI, Jayraj Chhaparia, P.W.No.7, the accused was hiding in his house at Kondgaon. It is submitted that the accused is expected to live in his house and not hide as he arrested the accused from his house only and that the possibility of blood being sprinkled on his clothes cannot be ruled out. Therefore, this is a fit case where the court should acquit the accused.

12. Ms.Deshmukh, the learned A.P.P. for the State submitted that the case rest on the sole testimony of P.W.No.1, Santosh Kisan Bhagat, the son of the deceased Kakadibai. There is no reason or justification to disbelieve his evidence merely because he happens to be the son of the victim and

their relations with Chintya Gopal Guhe were not cordial. It is submitted that once the prosecution having established that the victim was done to death with the help of a stone in her house which was a hut admeasuring 10' x 10', there is no reason why the evidence of P.W.No.1 has to be doubted. It is submitted that the prosecution has proved the presence of the assailant and having visited Kakadibai in the evening on the fateful day and, therefore, on getting an opportunity while Kakadibai was sleeping with her children in her house, the appellant accused killed her to get rid of her.

13. The learned A.P.P. for the State submitted that the evidence stands duly corroborated by the medical evidence which has been brought on record by examining P.W.No.6, Dr.Dinkar Devaji Gavit, who in his opinion has clearly expressed that the nature of the injury which was found on the dead body could be caused by the stone (pata) due to throwing of a stone of a medium size having a weight of about 10 kgs. and the nature of injury which were found on the dead body particularly the

skull corroborates the story given by Santosh Kisan Bhagat, P.W.No.1. It is further submitted that P.W.No.1, Santosh Bhagat having seen the appellant accused having assaulted his mother, immediately ran to his neighbour P.W.No.5, Suresh Mahadya Ghatal and then went to P.W.No.2, Hari Ambya Ghatal, who is the Police Patil and informed him of the incident. The contention of the learned counsel for the defence that the name of the appellant accused was not disclosed at the initial stage does not mean that it was never disclosed to the witnesses which is corroborated by their evidences. On this point, they have deposed that Santosh Bhagat, P.W.No.1 has disclosed to them that it is Chintya Gopal Guhe who had killed his mother with the help of a stone (pata) which has been seized from the spot and was sent to C.A. It is submitted that the prosecution has proved the case beyond doubt and, therefore, the appeal deserves to be dismissed.

14. The fact that death of Kakadibai Chintya Guhe was homicidal is not much disputed. P.W.No.6, Dr.Dinkar Devaji Gavit who conducted post mortem of

the dead body of Kakadibai noticed the following external injuries over the dead body.

1. C.L-W over the left parietal area of scalp 3 cms. above & 1 cm in front of the left ear. It was longitudinal to long axis of skull. The size of wound was 2" x 1/4" to 1/2" x bone deep
 2. There was underlined depressed palpable fracture of bone.
- The edges of the wound were drawn inside.
 - The nature of the wound was grievous to dangerous caused by hard and blunt object with forceful impact.
 - The age of the injury was less than 24 hours of p.m.examination.
 - The above injury was antemortem in nature.

Following internal injuries were also noticed:

- Haematoma around the injury as noted in Sr.No.17
- There was a depressed fracture of skull of left parietal bone area just below the external injury
- Left cerebral hemisphere was injured due to depressed fracture of the left parietal bone.
- There was a haematoma on the left side of the base the skull.

15. In the evidence of P.W.No.6, Dr.Dinkar Devaji Gavit, the Doctor has specifically stated that in the ordinary course of life, the injuries noticed on the person of the dead body were sufficient to cause death and in his opinion, the cause of death was Cardio respiratory failure due to shock and haemorrhage due to depressed fracture

of skull associated with injury to vital organ like brain. and has expressed that it can be caused due to throwing of a stone of a medium size having a weight of about 10 kgs. An attempt was made to suggest to this witness that the nature of injuries which were noticed on the dead body of Kakadibai would be due to fall on a hard and solid substance which has been specifically denied. In the alternative, it was also suggested that such an injury can also be caused if the Pata i.e. stone falls on a person sleeping on the floor from the height. There is no other evidence on record to show that the Pata i.e. the stone which is used for grinding was kept at a height and fell by accident as there is no such suggestion made in cross-examination of P.W.No.1. Therefore, there can be no doubt taking into consideration the nature of injuries noticed by Dr.Gavit, P.W.No.7 and his evidence that it can be caused by the stone which was sent to the C.A. In the C.A's report, the stone is shown as Ex.3 and according to the C.A. Ex.3 is stained with blood of which species of origin is human though the ABO Grouping was inconclusive. Therefore, though the prosecution

did not produce the stone in the court that by itself did not rule out the possibility that stone was used for assaulting the witness.

16. The most important point which requires to be determined is as to whether the prosecution has proved beyond doubt that it is the appellant accused who has committed murder of Kakadibai who was his wife. In our view, the evidence of P.W.No.1, Santosh Bhagat, who at the relevant time was just 15 years of age is very material. The learned counsel for the appellant accused submitted that as he is the sole eye witness in the case and not only interested but was on enemical terms with the appellant accused, his evidence deserves to be discarded. It is not a rule of law that in murder case conviction can never stand on the evidence of solitary eye-witness. On the contrary, such a view directly affronts Section 134 of the Evidence Act. It has been consistent view of the Supreme Court in the matter of appreciating the evidence of sole eye-witness in the case of Jose v. State of Kerala, AIR 1973 SC 994 onwards that it is worthy of mention that a witness may be wholly reliable,

may be neither wholly reliable nor unreliable and may be wholly unreliable. Conviction on the testimony of solitary witness is legal if he is wholly reliable Now let us see whether what is deposed by Santosh Bhagat, P.W.No.1 can be said to be wholly reliable or not.

17. In his evidence in the court, P.W.No.1, Santosh Bhagat has deposed that on the fateful night while he was sleeping alongwith his mother, brother and sister he woke up at about 9.00 to 9.30 p.m. on hearing a sound of a dash of stone which is described as 'dhad'. He then saw the appellant accused running away and a stone was found thrown on the head of his mother due to which her head was crushed and blood was oozing from her head and he found her to have died on the spot.

18. The learned counsel for the appellant accused has submitted that according to P.W.No.1, Santosh Bhagat, he has actually seen the accused in the compound and not inside the room which has come in his cross-examination. It cannot be overlooked that the house / hut in which the family was

sleeping was admeasuring 10' x 10'. The sequence of event as narrated by this witness clearly shows that he wakes up on hearing sound of 'dhad'. Taking into consideration that the stone was a pata and the force with which it was struck on the head of the victim which is clear from the nature of skull injuries suffered by the victim, would make sufficient noise to wake up a person who was just sleeping by the side of the victim and the natural reaction would be to see as to what has happened and it is in this sequence that Santosh, P.W.No.1 has noticed the appellant accused running away from the scene of occurrence. So merely because he says that he saw the accused running away and in cross-examination he states that he volunteers to have seen him in the compound does not make any difference as the hut is so small that one has to only step out to come out of the hut and it is quite natural that Santosh having seen the accused when he was going of the hut while escaping, and therefore, reference to compound has come.

19. We fail to understand as to how this makes his evidence untrustworthy. Further, the evidence

inspires confidence as he immediately goes to his neighbour, Suresh Mahadya Ghatal, P.W.No.5 and then to Police Patil, Hari Ambya Ghatal, P.W.No.2 and tells that it is the appellant accused who has assaulted his mother by throwing a stone on her head and she is lying dead in the house. These two witnesses i.e. P.W.No.2, Hari Ambya Ghatal and P.W.No.5, Suresh Mahadya Ghatal in their evidence clearly corroborate this part of the evidence of P.W.No.1, Santosh. In their cross-examination an attempt was made to get an admission that P.W.No.1 did not disclose the name of the assailant immediately on meeting them, does not mean that he did not reveal the identity of the assailant to them at all when in their examination in chief, it has been specifically stated that P.W.No.1 Santosh did tell that it is Chintya Guhe, the father who assaulted the mother with the stone. Further, merely because there were frequent quarrels between them, there is no reason why P.W.No.1 would falsely implicate his step father and allow the real culprit to escape particularly when the court finds from his evidence that he has seen the assailant and has immediately narrated the incident to his

neighbour, P.W.No.5 and Police Patil, P.W.No.2 It is an admitted fact that the appellant accused did visit his wife Kakadibai before the incident took place. Therefore, his presence in the village on the date of incident cannot be doubted. The evidence of P.W.No.1 Santosh also stands corroborated by spot / seizure panchnama and inquest panchnama, seizure of the stone and the C.A. report. Further on arrest of the appellant accused, his clothes were also seized and they were found stained with blood which is also not explained by him. Another material fact is that P.W.No.1 has immediately lodged an F.I.R. early in the morning disclosing the name of the assailant and there is no reason for him or the other witnesses namely P.W.No.5, Suresh Mahadya Ghatal or P.W.No.2, Hari Ambya Ghatal, Police Patil of the village to falsely implicate the appellant accused. It cannot be forgotten that the time of the incident Santosh, P.W.No.1 was only 15 years of age. Therefore, if his evidence is considered alongwith medical evidence and his conduct in immediately disclosing to his neighbour and Police Patil the identity of the assailant of his mother,

we have no hesitation to hold that his testimony can be safely relied upon to arrive at a conclusion that it is the appellant accused who has committed murder of Kakadibai. We therefore, find that the trial court has properly appreciated the evidence on record and placed reliance on P.W.No.1, Santosh Kisan Bhagat having found him to be a reliable witness. Therefore, we find no merits in the appeal. The appeal is dismissed.

(SHRI J.N. PATEL, J)

(SHRI A.A. SAYED, J)